

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 1

Major Features of the Controlled Substances Act

1.10 Major Controlled Substance Offenses

M. Violation of Michigan Constitutional Prohibition Against Excessive Fines; Effect of Forfeiture Proceeding

Insert the following case summary as the first bullet in Section 1.10(M):

F *Emmet County Prosecuting Attorney v 5118 Indian Garden Road*, ____ Mich App ____ (2002):

The claimant was convicted of possession with intent to deliver at least five but less than 45 kilograms of marijuana, contrary to MCL 333.7401(2)(d)(ii), after 17 pounds of marijuana were found in his home. After the conviction, plaintiff filed a civil forfeiture action against the claimant, arguing that the captioned property should be forfeited under MCL 333.7521 since it was used by claimant as a “container” for controlled substances and also to facilitate a drug offense. The trial court granted summary disposition to the plaintiff. On appeal, claimant argued, among other things, that the trial court erred in granting summary disposition to plaintiff because the forfeiture of his home constituted an excessive fine under the United States and Michigan constitutions.*

The Court of Appeals declined to address claimant’s federal constitutional issue, since the Excessive Fines Clause under the U.S. Constitution has never been held by the United States Supreme Court to apply to the states through the Fourteenth Amendment. Thus, the Court analyzed claimant’s argument under the Excessive Fines Clause of Const 1963, art I, § 16. In determining whether the fine violated the Michigan Constitution’s Excessive Fines Clause, the Court looked to the factors enunciated in *People v Antolovich*, 207 Mich App 714, 717 (1994), which are

*On appeal, claimant only challenged the forfeiture of his real property, not personal property. *Id.* at ____ n 1.

as follows: (1) the due regard to the object designed to be accomplished; (2) the importance and magnitude of the public interest sought to be protected; (3) the circumstances and nature of the act for which it is imposed; (4) the preventive effect upon the commission of the particular kind of crime; (5) and the ability of the accused to pay the fine, although the mere fact of an inability to pay the fine does not render the statute unconstitutional. In applying the foregoing factors to the facts of the case, the Court concluded that the forfeiture of claimant's house was not an excessive fine under the Michigan constitution:

“In considering the above factors from *Antolovich* . . . we conclude that the forfeiture of a home associated with drug trafficking serves as a strong deterrence measure. . . . In addition, the nature of defendant's illegal activity in the home in this case was severe, given the quantity of marijuana found. A witness testified that the street value of the drugs seized ranged from \$30,000 to \$65,000, depending on how the drugs were sold, and the records found in defendant's bedroom demonstrated that he was owed an additional \$20,000 from drug customers. The home was valued between \$100,000 and \$200,000, and [claimant's] attorney valued the home at the low end of this scale. Given the amount of drugs involved, the value of the drugs and the home, and the societal harm imposed by defendant's actions, we conclude that the forfeiture of defendant's home did not constitute an unconstitutionally excessive fine.”

On other issues, the Court held that the trial court did not err in granting summary disposition to plaintiff on the basis that there was a “substantial connection” between claimant's home and the drug activity, a nexus required under MCL 333.7521(1)(f). Finally, on public policy grounds, the Court held that the homestead exemption, as contained in Const 1963, art 10, § 3, and codified in MCL 600.6023, cannot be applied to the instant case, since claimant's home was used as an instrumentality to further illegal drug trafficking.